

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
Idaho State Office
1387 South Vinnell Way
Boise, Idaho 83709-1657

In Reply Refer To:
6842 (930) P

April 30, 2003

EMS
Information Bulletin No. ID-2003-105

To: District Manager and Field Office Managers, Upper Columbia-Salmon Clearwater District

From: Deputy State Director for Resource Services

Subject: Endangered Species Act Consultation – Grouped Actions at the Watershed Scale

The attached guidance was prepared to clarify the requirement to submit Section 7 consultations on grouped activities at the watershed scale biannually. This requirement originated in the 1998 Steelhead Biological Opinion and its implementation has raised a number of questions. Please direct any questions or comments on this subject to Tim Burton (208-373-3819) in the State Office.

Signed
Susan Giannettino

Authenticated
Caureen Miller
Staff Assistant, 930

Attachment
Conducting Biannual Programmatic Reviews of Grouped Actions at the Watershed Scale (6 pp)

Conducting Biannual Programmatic Reviews of Grouped Actions at the Watershed Scale

Tim Burton

April 8, 2003

The 1998 “**BIOLOGICAL OPINION** - Land and Resource Management Plans for National Forests and Bureau of Land Management Resource Areas in the Upper Columbia River Basin and Snake River Basin Evolutionarily Significant Units” (the Steelhead Biological Opinion [BO]), required that “like” projects be grouped for analysis of effects by Section 7 watershed biannually. The intent was to facilitate combined effects evaluations, and to avoid inefficient project-by-project consultations. Some areas, notably the North Central Idaho Level 1 Team, have captured these efficiencies in their consultation procedures.

When this requirement was first implemented in 1998, the Bureau of Land Management (BLM) and the Forest Service were evaluating all ongoing actions within Section 7 watersheds, along with any new agency actions proposed for 1999 and 2000. Watershed Biological Assessments (BAs) were prepared, and both formal and informal consultations included combined effects assessments of grouped (batched or bundled) projects. Since that time, these assessments have come up for biannual programmatic reviews of all ongoing actions and actions proposed for two years into the future, to meet the requirement to assess combined effects. There has been some confusion in implementing this requirement. This brief addresses questions and concerns for BLM in Idaho.

This requirement is addressed in several sections of the Steelhead BO: “Six key aspects of plan-level or related direction,” the “Reasonable and Prudent Measures, and Terms and Conditions,” and the “Prior commitments to be completed.” These make it clear that “reviews” will be conducted in the future on a biannual basis (see attachment). The following summarizes this direction from the Opinion.

Project “batching” is necessary to understand combined effects of federal actions.

BLM will group, analyze, and submit proposed activities biannually at a scale at least as fine as the Section 7 watershed. Biannual reviews of projects grouped by watersheds will be completed by January 15, of every other year.

Individual projects may be considered on a case-by-case basis only to meet unforeseen program and public needs.

BLM is to continually update the environmental baseline by maintaining a list of the status of and documenting the effects of all management actions, including restoration efforts at the watershed scale. This will be done by using the checklist and matrix of pathways and indicators.

BLM will provide narrative rationale supporting the results summarized in the matrix checklists, adding sufficient detail to fully explain any finding where a habitat indicator will be degraded.

BLM will gather the best available information to verify and update the environmental baseline.

The BLM was to submit by January 15, 1999, proposed projects for 1999 and 2000. Because this was to be done every other year, the lists were due on January 15, 2001, for projects in 2001 and 2002, and again January 15 of this year for projects proposed this year and next year. When these lists are submitted, they should include a review of the effects of projects grouped by

watershed, and an update of the environmental baseline using the best available information and the Matrix of Pathways and Indicators. This update will also include a narrative rationale fully explaining how or why an indicator in the Matrix will be degraded by an existing or proposed action. Since implementing this direction, in many cases, relatively few new projects have surfaced and a number of questions ensued.

Questions and Answers:

Questions 1. What if there are no known proposed actions that may affect listed species in the watershed this year or next year? Since no list would be prepared and submitted, then would there be a need to update the environmental baseline?

Answer: The direction requires “continually” updating the environmental baseline. As new information is received, it should be applied to relevant indicators in the Matrix. If any of these indicators would be degraded, then consultation should be initiated as there is now a potential to adversely affect the species. An example: New information reveals that steelhead have access to a stream reach previously considered inaccessible. That reach of stream is overgrazed by livestock and several relevant habitat indicators are degraded. Without mitigation the determination in the original BA could be changed from not likely to adverse affect (NLAA) to likely to adverse affect (LAA). Consultation should be initiated without waiting for the biannual review. If there has not been a change in the environmental baseline and there are no known proposed actions in the watershed, then initiating consultation would not be needed.

Question 2. We did a review of the environmental baseline and found that there was no change, do we need to reinitiate consultation?

Answer: As provided in CFR 402.16: Reinitiation of formal consultation is required if: 1) the amount or extent of incidental take is exceeded; 2) new information reveals effects of the agency action that may affect listed species or critical habitat in a manner or to an extent not considered in the BO; 3) the agency action is subsequently modified in a manner that causes an effect to the listed species or critical habitat not considered in the BO; 4) a new species is listed or critical habitat designated that may be affected by the action.

With respect to informal consultations, if the services submit a letter of "Non concurrence" (something that should not happen under Streamlining), then we should initiate formal consultation. There is nothing in regulation that would prevent National Oceanic and Atmospheric Administration fisheries or Fish and Wildlife Services (FWS) from adding a reinitiation trigger in a concurrence letter. However, the Consultation Handbook suggests that issuance of concurrence letters with reinitiation language should be rare or unusual. It is ultimately the action agency's determination whether or not consultation is reinitiated (the consultation agency may advise but the action agency would decide).

In assessing the need to reinitiate consultation on the watershed BAs, BLM should periodically review the environmental baseline and ongoing federal actions to see if incidental take has been exceeded or if there have been changes in the effects (direct, interrelated/interdependent, and cumulative) of the actions. If the environmental baseline has changed or if any of the ongoing

actions have changed, then the Matrix should be used to make the assessment. If effects documented in the Matrix have NOT changed, then there is no need to reinitiate. If they have, then reinitiation is warranted. If incidental take has been exceeded, then any operations causing such take need to cease pending reinitiation.

Question 3. We have an unforeseen action that came up this year, which may affect listed species, do we have to wait until the biannual review to consult on it?

Answer: As provided in the direction, “Individual projects may be considered on a case-by-case only to meet unforeseen program and public needs.” Thus, if the action came up as a result of a public request (e.g. a right-of-way application), timely response would constitute an “unforeseen program and public need.” Also, anytime an unforeseen action is proposed that has the potential to affect listed species, it needs to be evaluated as to its added effect with respect to the environmental baseline. Therefore, if its added effect in relation to the existing effects of all ongoing actions would adversely change the environmental baseline (an indicator in the matrix is degraded by the action), then consultation and early involvement at Level 1 should be initiated immediately on the action and before its implementation. If the unforeseen action would not degrade any indicator in the matrix, and there are no programs or public needs to complete consultation, then waiting until the biannual review might be warranted.

Question 4. When we conduct a biannual review, as required by the 1998 BO, does this automatically reinitiate consultation with the consulting agencies on the watershed BAs?

Answer: No, it depends on the reinitiation requirements listed in the answer to Question 2. If reinitiation is not warranted, then BA preparation and submission is not necessary. However, in the spirit of Streamlining, the Level 1 Team should agree on the conclusions from the review of the effects checklists documented in the matrix, and that reinitiation is, or is not warranted.

ATTACHMENTS

Six key aspects of plan-level or related direction

These are considered key outstanding items needed to ensure that PACFISH-amended Resource Management Plans (RMPs) sufficiently protect the listed species and designated critical habitat during the extended period for which PACFISH would apply:

d. Grouping Projects by Watershed

Shortly after Snake River salmon were listed, National Marine Fisheries Service (NMFS), US Forest Service (USFS), and BLM agreed to a consultation process which included batching projects by watershed (March 6, 1992, Interagency Agreement). The agencies found project batching necessary to understand combined effects of projects and to verify that needed improvements in environmental baseline conditions would likely occur. Following this agreement, during 1993 through early 1995, BAs were submitted including all actions within 4th or 5th field Hydrologic Unit Code (HUC) watersheds. Under PACFISH and the streamlining Memorandum of Agreement, however, consultations have been conducted almost entirely on a project-by-project basis. The Level 1 teams and project planners thus have had limited ability to track changes in baseline conditions and understand combined effects of projects. This limited understanding can in turn add up to broad-scale adverse effects that action agencies and NMFS do not consider at the project scale.

The BA does not address this issue directly, but does mention (in recommendation 3) a technique which may be used to revive the watershed approach to consultation. Recommendation 3 of the BA includes specific guidelines for screening ongoing actions for effects on steelhead using NMFS' Matrix of Pathways and Indicators (NMFS 1996). The matrix has been applied effectively in consultations on National Forests and BLM Districts covered by the Northwest Forest Plan (NFP). The matrix provides tools for tracking environmental baseline conditions and evaluating the effects of actions in a consistent manner. These tools also allow analysis of groups of actions in a watershed and enable accounting of specific elements of fish habitat conditions in the watershed. Recommendation 3 mentions use of the matrix only for ongoing actions; but the matrix might also be applied to proposed actions. The matrix could give line officers, project planners, and Level 1 teams improved understanding of baseline conditions and effects from single and multiple actions. The USFS, BLM, and NMFS developed the specific requirements described below to revive the approach of consulting on batches of projects by watershed.

The USFS and BLM will conduct biannual programmatic reviews and/or project bundling by watershed or sub basin. Field managers working with the Level 1 teams will programmatically review actions or bundled projects at least every two years. Programmatic reviews and project bundling will enable managers to better evaluate overall risks to listed and proposed fish and their important habitats on a broader range of activities, and provide the crucial ability to step back from the project-by-project evaluations that now dominate the system.

By January 15, 1999, the USFS and BLM will group, analyze, and submit (by watershed)

activities proposed for fiscal year (FY) 1999 and 2000 and biannually thereafter. This shall be accomplished at least as fine a scale as section 7 watersheds (as per commitment in the March 1992 Interagency Agreement) already delineated for Snake River salmon and wherever possible coordinated with FWS bull trout delineated watersheds. To meet this commitment, section 7 watersheds will be delineated for the upper Columbia River Basin Ecologically Significant Unit (ESU). Individual projects may be considered on a case-by-case only to meet unforeseen program and public needs.

C. Reasonable and Prudent Measures, and Terms and Conditions

1-2. Complete prior commitments in PACFISH, RMPs, and previous Opinions to meet the direction in BA Recommendation 7 (increased implementation of watershed analysis), as described in section VIII of this Opinion. An Implementation Report for this item (2.a and 2.b, Appendix 2) shall be submitted to NMFS, with the road restoration schedule by January 15, 1999. For item 2.c., biannual reviews of projects grouped by watersheds will be completed by January 15, of every other year.

1-3. Implement conservation actions based on mapping and analysis of unroaded areas and areas of species occurrence; and transition from project-by-project section 7 consultations to watershed-scale programmatic approaches. The USFS and BLM shall submit an Implementation Report for this item to NMFS by September 1, 1999.

2-1. To ensure that proposed actions designed in accordance with relevant standards and guidelines are in fact consistent with the NFP Aquatic Conservation Strategy (ACS) objectives, USFS and BLM decision makers will apply the results of watershed analysis and other relevant information to reach findings that actions either "meet" or "do not prevent attainment" of the ACS objectives. This finding will be made for grouped actions at the watershed scale (20-200 square miles: typically 5th and 6th field HUCs). The finding will initially be made by management units' ID teams (adhering to plan level guidance in RMPs, amendments, plan-level Opinions, etc.), and then verified by level 1 teams. Watershed analysis is required in key watersheds, roadless areas, and riparian reserves before determining how proposed land management activities meet ACS objectives (NFP Record of Decision, page B-20).

2-2. Implement the Level 1 team consultation process and apply the NMFS' matrix (NMFS 1996) consistent with BA recommendation number 3, to:

a. Continually update the environmental baseline by maintaining a list of the status of, and documenting the effects of all management actions, including restoration efforts, at the watershed scale.

b. Evaluate proposed actions grouped by watershed to determine whether groups of proposed actions are either not likely to adversely effect or likely to adversely effect listed steelhead;

c. Provide narrative rationale supporting the results summarized in the matrix checklists, adding sufficient detail to fully explain any finding where a habitat indicator would be degraded; and

d. Carry out the required interagency coordination to complete the consultation process informally or formally.

Prior commitments to be completed include:

c. The USFS and BLM will conduct biannual programmatic reviews and/or project bundling by watershed or sub basin. Field Managers working with the Level 1 teams will programmatically review actions or bundled projects at least every two years by January 15, of every other year. A key component of this review will be gathering the best available information to verify and update the environmental baseline. Understanding of the environmental baseline is essential to provide the fundamental context for reviewing programs and bundled actions. Programmatic reviews and project bundling will enable managers to better evaluate overall risks to listed and proposed fish and their important habitats on a broader range of activities and provide the crucial ability to step-back from the project-by-project evaluations that now dominate the system.

By January 15, 1999, the USFS and BLM will group, analyze, and submit (by watershed) activities proposed for FY 1999 and 2000 and bi-annually thereafter. This shall be accomplished at a scale at least as fine as section 7 watersheds (as per commitment in the March 1992, Interagency Agreement) already delineated for Snake River salmon and wherever possible coordinated with FWS bull trout delineated watersheds. To meet this commitment, section 7 watersheds will be delineated for the upper Columbia River Basin ESU. Individual projects may be considered case-by-case only to meet unforeseen program and public needs.